

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 835 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SAMANT BAGHABHAI JEBALIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 835 of 2001
MR SHAKTISINH GOHIL for Petitioner No. 1
MRS HANSABEN PUNANI, APP for Respondent No. 1
RULE SERVED for Respondents No. 2-3
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/01/2002

C.A.V. JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed for quashing the

order dated 24-7-2001 passed by the Sub-Divisional Magistrate, Palitana under Sec.56 of the Bombay Police Act, 1956 as also the order dated 8-9-2001 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar.

2. The facts in short are that a notice was issued to the petitioner to show cause as to why he may not be deported under Sec.56 of the Bombay Police Act for the term of two years from the district limits of Bhavnagar, Amreli, Surendranagr, Rajkot and Ahmedabad as he is involved in three offences. It is the case of the petitioner that he has filed a detailed reply before the respondent No.2, but he has not been given any opportunity of hearing to defend his case. An appeal preferred before the appellate authority was dismissed on 8-9-2001 which is giving rise to the present petition.

3. Heard learned advocate for the petitioner and learned APP for the State.

4. Learned advocate for the petitioner has drawn my attention towards the show-cause notice and the order passed by both the authorities and argued that the offence taken into consideration does not fall under Chapters 16 and 17 of IPC which has been mechanically mentioned in the order. He has also argued that the appellate authority has also not considered the arguments advanced by the petitioner and has confirmed the order of externment. He has relied upon the case of Dafer Rahman Zarar Vs. State of Gujarat and Ors., 1999(1) G.L.H. page 425 more particularly pages 6 and 7. I have gone through both the orders and the show cause notice passed by the authorities as also the reply filed by the petitioner. It reflects from the order passed by the authority that the said order has been passed without applying mind. In the last paragraph, he has categorically mentioned that while passing the order, he was having the original file of all the three FIRs and after seeing the same, he came to the conclusion that order passed by the Mamlatdar is required to be confirmed. But the facts are otherwise which have been shown to me by the learned advocate for the petitioner that out of three FIRs, in respect of FIR which has been registered as C.R.No.II-132 of 2001, 'A' summary report is already submitted by the authority in the month of December, 2000 itself. But the appellate authority has not considered the same at the time of confirming the order and, therefore, it is a case of non-application of mind on the part of authority. Even the authority has not considered the facts that all the three complaints

have been filed by the family members of one person and there are civil disputes which are going on between the parties in the Courts of law. In these circumstances, the orders require interference because the order of externment order violates the principles of natural justice and also suffer from the vice of non-application of mind. Reliance is placed on the case of Dafer Rahman (supra).

5. In view of the above, the petition is allowed. Order dated 24-7-2001 passed by the Sub Divisional Magistrate, Palitana as also the order dated 8-9-2001 passed by the Deputy Secretary, Home Department, Sacivalaya, Gandhinagar, are quashed and set aside. Rule is made absolute.

(R.P.DHOLAKIA, J.)

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